IN THE

Supreme Court of the United States

FEBRUARY TERM, 1951

No. . . .

WALTER N. SMITH and MARTHA BATEMAN,

Petitioners,

against

FORDHAM UNIVERSITY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

WALTER N. SMITH,

Petitioner,

No. 551 East 187th Street,

New York 58, N. Y.

INDEX TO PETITION

	PAGE
Statement of Jurisdiction	1
Questions Presented	2
Constitutions and Statutes Involved	3
Statement	3
Reasons for Granting the Writ	4
Conclusion	5
Decisions of Cases Relied on in Support of Petition Herein	6
Proof of Service	8

CITATIONS

Agnellio v. United States, 269 v. 28, 34, 35	6
Baker v. Grice, 169 U. S. 284	7
Boise Water Co. v. Boise City, 230 U. S. 814	7
Chicago B. & Q. Ry. Co. v. Cram, 228 U. S. 70	7
David v. Burke, 179 U. S. 403	6
Doge v. Woolsey, 18 How 347	6
Duncan v. Missouri, 152 U. S. 382	7
Ex parte Milligan, 71 U. S. (2)	6
Gilman v. Tucker, 128 N. Y. 190, 205	7
Gouled v. United States, 255 U. S. 389	6
Home Building and Loan Assn. v. Blaisdell, et al., 290 U. S. 398	6
Home Electric Co. v. Los Angeles, 227 U. S. 278	7
International Harvester Co. v. Missouri, 234 U. S. 199	7
Jones v. North George Elec. Co., 125 Ga. 618	6

Citations (continued).

	PAGE
Kilbourn v. Thompson, 103 U. S. 168	6
Lindsey v. National Carbonic Gas Co., 220 U. S. 78	7
McCulloch v. Maryland, 4 Wheat 316 and 415	6
Michigan Central R. R. v. Vreeland, 227 U. S. 59	7
Missouri Pacific Ry. Co. v. Humes, 115 U. S. 512	7
Mooney v. Holohan, 294 U. S. 103, 113	6
National Bank v. Dering, 94 U. S. 35	6
Norfolk Southern R. R. v. Ferbee, 238 U. S. 269	7
Panama Refining Co. v. Ryan, 293 U. S. 388	6
People of the State of New York, ex rel., Bryant v. Zimmerman, 278 U. S. 63, 68, 69	6
Schecter Poultry Corp. v. United States, 295 U. S. 495	6
Shreveport v. Cole, 129 U. S. 35	6
Slocum v. New York Life Ins. Co., 228 U. S. 364	6
Wait v. Dowley, 94 U. S. 532	6
Wilson v. United States, 232 U. S. 563	7

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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

Petitioner prays that a writ of certiorari issue to review the final Order of the Court of Appeals of the State of New York. There was no opinion.

The jurisdiction of this Court is invoked under U. S. Code, Section 2255.

Statement of Jurisdiction

The final Order herein was entered on the 17th day of November, 1960. That said Court is the highest Court in the State of New York and refused to take jurisdiction of the following:

1. To preserve the supremacy of the Constitution of the United States.

2. The valid laws of Congress.

3. To recognise judicial notice of the concurrent action of Congress and the President on December 12, 1946, declaring emergency to an end.

4. To recognize the conspiracy between the new landlord and the special agent of Central Islip Hospital against petitioner preventing your petitioner from making his motion for leave to appeal in time.

5. Refusal to give full faith and credit to the decisions of the Supreme Court of the United States and her sister states' decisions of its highest courts.

6. Refusal to give any consideration to the unbroken line of decisions of the Supreme Court of the United States with reference to a rule of practice when a constitutional right of a litigant is involved.

7. Refusal to consider the applicable decisions presented or to follow its own decisions.

8. Refusal to pass upon the deed to the property in question.

Questions Presented

1. Whether a statute of a state is greater than the constitution.

2. Whether it still remains the duty of the Court to preserve both constitutions.

3. Whether democracy will remain the law of the land in America or dictatorship prevail.

4. Whether due process of law of the 5th and 14th Amendments should be deleted.

Constitutions and Statutes Involved.

Constitution of the United States, Constitution of the State of New York, Article 1, Section 6, Article 6, Section 19, Sections 588-589 of Civil Practice Act, Section 236, Civil Practice Act and Section 210, Civil Practice Act, Section 170a, Civil Practice Act, and Section 15 of Municipal Court Code, Appellate Term, Rule VII.

Statement.

Prior to the commencement of this action and proceeding, it seems that The Federal Power Commission of Washington, a Federal Agency acquiescing with a State instrumentality and being licensed by said Agency, appointed Mr. Robert Moses to complete their purpose of overthrowing the Government of the United States and that of this State from within.

That the President of Columbia University organized an association under the name and style of Columbia College Associates, the purpose of which seems to abolish "the Government of, by and for the people" and set up a dictatorship and substitute in its place private industry contrary to the intent of the Constitution of the United States and of this State reflecting upon the remaining forty-nine states of the union. And on more than one occasion our Legislators passed laws that seemed to have transcended their authority, in anticipation of putting it in the constitution of this State to prevent attacks of its unconstitutionality.

The action and proceeding below were commenced as indicated in papers on appeal which are annexed hereto and made part of the record in this appeal.

The appeal was noted for argument on the opening of said appellate term, Sept. 5, 1959 and argued on that date. That on the 1st day of September 1959, the Landlord brought

summary proceedings against appellants for rent not due and payable to said Landlord, while the Appellate Term was considering the determination of said appeal. Appellants appealed from the final order of the Municipal Court, Bronx County, to the Appellate Term first department. And, too, at the same time the special agent, Mr. Delvin, asking me to send him the four checks of the government that I had of Martha Bateman that I told him I had when I demanded her pass book and other property she had on her person on her arrival there from Bellevue Hospital of this city, which he refused and still refuses, notwithstanding the fact that your appellant served upon him copy of my Power of Attorney, which copy is filed in the Municipal Court, recorded in 1929 in the Hall of Records, this city.

The Landlord, special agent and respondents, coupled with statutes passed, prevented appellant from making my motion for leave to appeal or reargument in time; also tearing down the building without notice, while appeal was pending since 1957, said building containing most of my personal property.

And this seems the basis of a continuous conspiracy to abolish "the government of, by and for the people." There has been no change of parties or attorneys.

Reasons for Granting the Writ

1. To ascertain whether in this case a statute is greater than the constitutions.

2. Whether eminent domain is greater than the constitution.

3. To bring solidarity in the Nation.

4. The Court of Appeals of the State of New York refused to decide an important question of Federal law which has not been but should be settled by this Court.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this petition for writ of certiorari should be granted.

Respectfully submitted,

WALTER N. SMITH,
Petitioner,
No. 854 East 167th Street,
New York 59, N. Y.

Decisions of Cases Relied on in Support of Petition Herein

Wait v. *Dowley*, 94 U. S. 532;
McCulloch v. *Maryland*, 4 Wheat 316 and 415;
Agnellio v. *United States*, 269 U. S. 28, 34, 35.

Mr. Justice Butler said in course of his opinion: "No rule of practice for any technical reason must not prevail over a Constitutional right."

Doge v. *Woolsey*, 18 How 347;
National Bank v. *Dering*, 94 U. S. 35;
Shreveport v. *Cole*, 129 U. S. 43;
David v. *Burke*, 179 U. S. 403;
Jones v. *North George Elec. Co.*, 125 Ga. 618;
Kilbourn v. *Thompson*, 103 U. S. 168;
Ex parte Milligan, 71 U. S. (2).

This seems an extraordinary case of great public importance.

Panama Refining Co. v. *Ryan*, 293 U. S. 388;
Schecter Poultry Corp. v. *United States*, 295 U. S. 495;
Agnellio v. *United States*, 269 v. 28, 34, 35;
Home Building and Loan Assn. v. *Blaisdell, et al.*, 290 U. S. 398;
Mooney v. *Holohan*, 294 U. S. 103, 113;
People of the State of New York, ex rel., Bryant v. *Zimmerman*, 278 U. S. 63, 68, 69;
Gouled v. *United States*, 255 U. S. 389.

When violations of provisions of FEDERAL CONSTITUTION IS THEREBY INVOLVED AS HERE, STATE PRACTICE CANNOT BE FOLLOWED.

Slocum v. *New York Life Ins. Co.*, 228 U. S. 364

Mr. Justice Van Deventer said the Federal Court cannot

follow State Statute or practice in opposition to a provision of the Federal Constitution.

Boise Water Co. v. Boise City, 230 U. S. 814;
Michigan Central R. R. v. Vreeland, 227 U. S. 59;
Wilson v. United States, 232 U. S. 563;
Home Electric Co. v. Los Angeles, 227 U. S. 278;
Norfolk Southern R. R. v. Ferbee, 238 U. S. 269.

Mr. Justice Lamar said a substantial right or defense under Federal law cannot be lessened or destroyed by a state rule of practice.

Appellant applying for his remedies is not permitted to come into Court.

Missouri Pacific Ry. Co. v. Humes, 115 U. S. 512;
Chicago B. & Q. Ry. Co. v. Cram, 228 U. S. 70;
Gilman v. Tucker, 128 N. Y. 190, 205.

THE DISCRIMINATION HEAPED UPON PETITIONER BECAUSE HE IS NOT A MEMBER OF THE BAR OF THIS STATE SEEMS AN ARBITRARY EXERCISE OF THE POWERS OF GOVERNMENT.

Duncan v. Missouri, 152 U. S. 382;
Baker v. Grice, 169 U. S. 284;
Lindsey v. National Carbonic Gas Co., 220 U. S. 78;
International Harvester Co. v. Missouri, 234 U. S. 199.

Unsettled questions concerning the decision by this Court in Ebbets Field (Brooklyn Dodgers) and the Coliseum where Montgomery Street in Brooklyn and 59th Street in Manhattan were determined on different grounds.

Respectfully submitted.

WALTER N. SMITH,
Petitioner.

Proof of Service

I, WALTER N. SMITH, petitioner herein, appearing in person and as trustee of Martha Bateman, petitioner, hereby certify that, on the 25th day of January, 1961, I served one (3) copy of the foregoing petition for a writ of certiorari on the Respondent, Fordham University, in person, on Respondent's attorneys of record as follows: Demov & Morris 1450 Broadway, New York 18, N. Y.

WALTER N. SMITH
Petitioner,
No. 854 East 167th Street.
New York 59, N. Y.

Supreme Court of the United States

No. 703

WALTER N. SMITH and MARTHA BATEMAN
Petitioners

AGAINST

FORDHAM UNIVERSITY
Respondent

NOTICE OF MOTION AND PETITION FOR A REHEARING FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

WALTER N. SMITH
Petitioner
No. 854 East 167th Street,
New York 59, N. Y.

INDEX.

	PAGE
Notice of Motion	a
Preface	b
Petition	1
Argument	1
Conclusion	5
Appendix A	7a
Appendix B	7b
Appendix C	7b

CITATIONS

Baker v. Grice, 169 U. S. 284	2
Brown v. Smart, 145 U. S. 454	2
Chicago B and Q Ry. Co. v. Chicago, 166 U. S. 226	3
Davidson v. New Orleans, 96 U. S. 97	3
Eubanks v. Richmond, 226 U. S. 137	2
Frost, et al. v. Railroad Comm. of State of California, 271 U. S. 583	3, 5
Home Tel., etc., Co. v. Los Angeles, 227 U. S. 278	3, 5
Hurd v. Hodge, 334 U. S. 24	3, 4
Lither, et al. v. United States, 334 U. S. 742, 783, 786, 791	3
McCale v. Atchison & F. & S. Fr. Co., 235 U. S. 1st 162	2
Mitchell v. United States, 313 U. S. 94, 95, 96, 97	3
Murdock v. Penna., 319 U. S. 165	3, 4
O'Donoghue v. Bois, 159 N. Y. 37, 98, 99, 102	2
People v. Turner, 117 N. Y. 227	2
Shelly v. Kramer, 334 U. S. 1	3
Smith v. Texas, 311 U. S. 128, 130	3, 4
Traux v. Raich, 239 U. S. 33	3, 4

Cases Decided After Return for Certiorari Was Denied:

Altoona Publix Theatres, Inc. v. Tre-ergon Corporation, 294 U. S. 477	7a
Brinkerhoff-Paris Trust and Saving Co. v. Hill, 280 U. S. 550	7a
Brinkerhoff-Paris Trust and Saving Co. v. Hill, 281 U. S. 673	7a
Douglas v. Willents, 296 U. S. 1	7a

Notice of Motion.

SUPREME COURT OF THE UNITED STATES

No. 703

WALTER N. SMITH and MARTHA BATEMAN,

Petitioners,

against

FORDHAM UNIVERSITY,

Respondent.

PLEASE TAKE NOTICE that upon the Preface hereto a motion will be made in the Supreme Court of the United States, Washington, D.C., on May 29th, 1961, or as soon thereafter as counsel can be heard for an order for special leave for a rehearing of the petition denied on March 20th, 1961, which was sent by United States Parcel Post in ample time and was received by the Clerk too late that said petition seems necessary and proper to enable the Government of the United State to function, the judiciary to maintain its duty to be the final arbiter of what the constitution and law is, and that petitioner may not be forever barred from the Fountain of Justice.

The reasons why this petition for leave is made:

1st. To prevent the Government of the United States from falling apart.

2nd. That the Federal Constitution is the supreme directing head of this country.

3rd. That she, "Constitution of the United States," has assigned the Supreme Court of the United States the final arbiter of the constitution, laws of the United States and of the several states.

4th. That the Constitution will not be overthrown and disregarded from within or without.

5th. That petitioner being injured and damaged may go to and fro in his pursuits of happiness, freedom to press his claim in court and enjoy good government.

Respectfully,

Dated, May 18, 1961. Walter N. Smith

WALTER N. SMITH,

Petitioner,

No. 854 East 167th Street,

New York 59, N. Y.

Preface.

SUPREME COURT OF THE UNITED STATES

No. 703

WALTER N. SMITH and MARTHA BATEMAN,

Petitioners,

against

FORDHAM UNIVERSITY,

Respondent.

Petitioner herein asks leave of the Court to file Petition for Rehearing, which was diligently sent in ample time to reach the Court. The papers have been returned to Petitioner as having been received too late by the Clerk.

This case seems to be one worthy of Supreme Court review, and the constitutional question should be answered to preserve the dignity of the Constitution of the United States, and the Supreme Court of the United States, and to perpetuate their honor.

Your Petitioner has not benefited in any way by the unconstitutionality presented to make said Petition for Rehearing moot. When the Clerk of the Court wired Petitioner on March 20, 1961, Petitioner wrote asking how much time he had to prepare said Petition, and was informed "within twenty-five days." Petitioner prepared said Petition at once, and had the printer rush the job, and Petitioner mailed them himself on the same day as received from the printer, April 12, 1961, at the General Post Office, 32nd Street and Eighth Avenue, New York, New York. The period of twenty-five days had not elapsed, even if the Clerk did not receive the papers in time.

The papers to the Solicitor General were returned (see Appendix A at page 7a, herein).

WALTER N. SMITH,

Petitioner.

(Received Apr 25 1961, Office of the Clerk, Supreme Court, U.S.)

IN THE

Supreme Court of the United States

No. 703

WALTER N. SMITH and MARTHA BATEMAN,

Petitioners,

against

FORDHAM UNIVERSITY,

Respondent.

PETITION FOR A REHEARING FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

Petitioner, being aggrieved at the denial of petition for a writ of certiorari to review the final order of the Court of Appeals of the State of New York on March 20, 1961, prays for a rehearing of said petition for the following reasons:

(1) That said petitioner is personally injured and damaged;

(2) That petitioner discovered that Rule 33 of the Supreme Court has been amended, 28 U.S.C. No. 2403.

The amendment of the rule has been complied with.

Argument.

The Preamble to the Constitution submitted the purpose of this Government to the Convention assembled in Philadelphia, who enacted it into law, and the indestructible States of the Union ratified it, and it became the greatest

document ever devised by man. But the dissenters predicted that it would last only one hundred and sixty years. Now having lasted beyond this period mentioned, and having made this country the greatest in the world, here come a group of people who want to scrap it and substitute dictatorship sponsoring private industry, divesting itself of all its honor and progress.

The proceeding and action started by the respondents in violation of and contrary to the Constitutions of the United States and of the State of New York, and your petitioner having been personally injured and damaged, has such interests as would entitle him to attack the constitutionality of both statutes and defend the Constitutions.

McCale v. *Atchison & F. & S. Fr. Co.*, 235 U. S. 1st 162;
Eubanks v. *Richmond*, 226 U. S. 137;
Baker v. *Grice*, 169 U. S. 284;
Brown v. *Smart*, 145 U. S. 454;
People v. *Turner*, 117 N. Y. 227.

It would seem an absurdity to declare the Federal Constitution the supreme law of the land one day, and that same document of no effect, the next.

Your petitioner tried to point out the excess authority of the Legislators and the ground upon which it has been infringed, and the conduct of the Appellate Term and the Appellate Division, First Department, in violating the mandate of the Constitution, Section 19 of Article 6, which your petitioner believes spoiled the limitations in Rule 7 of the Appellate Term. Mr. Justice O'Brien said, "but an Order of a Court cannot validate what the Constitution and statutes expressly forbid." *O'Donoghue* v. *Bois*, 159 N. Y. 37, 98, 99, 102.

IT IS NOT DUE PROCESS OF LAW WHERE COURTS APPLY A RULE IN ABSOLUTE DISREGARD OF THE

CONSTITUTIONS, STATUTES, AND THE JUST RIGHTS OF A PARTY.

Shelly v. *Kramer*, 334 U. S. 1;
Hurd v. *Hodge*, 334 U. S. 24;
Smith v. *Texas*, 311 U. S. 128, 130;
Frost, et al. v. *Railroad Comm. of State of California*, 271 U. S. 583;
Home Tel., etc., Co. v. *Los Angeles*, 227 U. S. 278;
Truax v. *Raich*, 239 U. S. 33;
Lither, et al. v. *United States*, 334 U. S. 742, 783, 786, 791;
Chicago B & Q Ry. Co. v. *Chicago*, 166 U. S. 226;
Davidson v. *New Orleans*, 96 U. S. 97;
Murdock v. *Penna.*, 319 U. S. 165;
Mitchell v. *United States*, 313 U. S. 94, 95, 96, 97.

In *Shelly* v. *Kramer*, *supra*, Chief Justice Vinson said, among other things in course of his opinion:

"The rights created by due process and equal protection clause of the Fourteenth Amendment are guaranteed to the individual and the rights established are personal rights."

Again:

"State action within the Fourteenth Amendment refers to exertions of State power in all forms and when the effect of that is to deny rights subject to the protection of the Fourteenth Amendment, it is the obligation of the Supreme Court of the United States to enforce the Constitutional commands."

Again:

"The power of state to create and enforce property interest must be exercised within the boundaries defined by the 14th Amendment."

In *Hurd v. Hodge, supra*, Chief Justice Vinson, in delivering the opinion of the Court, confirmed and ratified as confirmed all legal precedents on the subject not forgetting personal property: the 14th Amendment, he said, was closely related both in inception and in the objectives which Congress sought to achieve.

In *Smith v. Texas, supra*, Mr. Justice Black said, at page 130:

> "The Fourteenth Amendment requires that equal protection to all must be given, not promised."

In *Murdock v. Penna., supra*, Mr. Justice Douglas said, at page 113:

> "A State may not impose a charge for the enjoyment of a right granted by the Federal Constitution."

In *Mitchell v. United States, supra*, Chief Justice Hughes said, at page 94:

> "The denial to appellant accommodations because of his race would be an invasion of a fundamental individual right which is guaranteed against State action by the Fourteenth Amendment."

In *Truax v. Raich, supra*, Chief Justice Hughes said:

> "The provisions of the Fourteenth Amendment are universal in their application to all persons within the territorial jurisdiction of the United States, without regard to any difference of race, color, or of nationality, and the equal protection of the laws is a pledge of equal laws."

In this case, the State of Arizona sought to justify the action under the exercise of police power to make reasonable classification in legislating to promote the health, safety, morals and welfare of those within its borders.

The Chief Justice further held that class legislation and discrimination are prohibited by the Fourteenth Amendment.

In *Home Tel., etc., Co. v. Los Angeles, supra*, Chief Justice White held that:

> ". . . the prohibitions contained in the Fourteenth Amendment extend to all acts of the State, whether through its Legislative, its Executive, or its Judicial authorities."

In *Frost v. Railroad Comm. of Calif., supra*, Mr. Justice Sutherland said, in course of his opinion:

> "But the power of the State in that respect is not unlimited and one of the limitations is that it may not impose conditions which require the relinquishment of Constitutional rights."

CONCLUSION.

For the reasons set forth above, it is respectfully submitted that this petition for a rehearing for a writ of certiorari to the Court of Appeals of the State of New York should be granted.

Respectfully submitted,

WALTER N. SMITH,

Petitioner,

No. 854 East 167th Street,

New York 59, N. Y.

These cases were decided after Petition for Certiorari was denied:

Douglas v. *Willents*, 296 U. S. 1;
Brinkerhoff-Paris Trust and Saving Co. v. *Hill*, 280 U. S. 550;
Brinkerhoff-Paris Trust and Saving Co. v. *Hill*, 281 U. S. 673;
Altoona Publix Theatres, Inc. v. *American Tregeon Corporation*, 294 U. S. 477.

Appendix A.

COPY

OFFICE OF THE SOLICITOR GENERAL
Washington, D.C.

April 14, 1961

Mr. Walter N. Smith
854 East 167th Street
Bronx
New York 59

Re: WALTER N. SMITH and MARTHA BATEMAN, Petitioners v. FORDHAM UNIVERSITY
Petition for writ of certiorari to the Court of Appeals of the State of New York

Dear Mr. Smith,

Thank you for sending us the copies of your petition for writ of certiorari and papers on appeal, etc. in the above entitled case.

Since the Federal Government is not a party to this litigation, I am returning herewith the documents which you sent to the Solicitor General.

Sincerely yours,

(signed)
Viola A. Bartz
Legal Assistant

Enclosures

Appendix B.

363 U. S. 859 June 20, 1961.

AMENDMENT OF RULES OF THIS COURT

ORDER

It is ordered that Paragraph 2 of Rule 33 of the Rules of this Court be amended by designating said Paragraph 2 (a) and by adding Paragraph 2 (b) as follows:

(B) In any proceeding in whatsoever Court arising wherein the constitutionality of any Act of Congress affecting the public interest is drawn in question and the United States or any agency or employee thereof is not a party, all initial pleadings, motions or papers in this Court shall recite that 28 U.S.C. Section 2403 may be applicable and shall be served upon the Solicitor General, Department of Justice, Washington, D. C. In proceedings from any Court of the United States as defined by 28 U.S.C. Section 457, such initial pleadings, motion or paper shall state whether or not any such Court has pursuant to 28 U.S.C. Section 2403 certified to the Attorney General the fact that the constitutionality of such Act of Congress was drawn in question.

Appendix C.

MUTUAL SECURITY ACT OF 1959

PUBLIC LAW 86-108; 73 STAT. 246

* * *

"Sec. 2. Statement of Policy.—(a) It is the sense of the Congress that peace in the world increasingly depends on wider recognition, both in principle and practice, of the dignity and interdependence of men; and that the survival of free institutions in the United States can best be assured in a world wide atmosphere of expanded freedom."